

CHARLES DIXON ET AL. }
 vs. } MARCH TERM, 1848.
 HENRY R. W. DIXON ET AL. }

[ASSIGNMENT OF VENDOR'S LIEN.]

UNLESS an express contract can be shown for the transfer of the vendor's lien, it will not pass to the assignee simply upon the footing of the assignment of the debt.

There are cases in which the benefit of the vendor's lien has been extended to third persons ; but they are cases in which the principle of marshalling assets has led to such results, or where sureties, who have been compelled to pay for their principals, have been, by substitution, clothed with all the rights and remedies of those whose debts they paid.

There has been no case found where the assignee of a note or other security, given for the purchase money of land, has been permitted to sustain a claim of this description on an implied agreement to assign the lien, though cases may be found, in which, by *express agreement*, the lien has passed to the assignee of the bond or note.

The lien being intended to secure the payment of the purchase money to the vendor, an assignment of the notes or bonds given therefor, without responsibility, and for value, is equivalent to payment and extinguishes the lien.

[This cause was brought to a hearing, and argued on exceptions to the Auditor's report, the main point at issue being whether the assignee of a bond given for the purchase money of land conveyed by the vendor to the vendee, can claim the benefit of the equitable lien of the vendor, without any express agreement for the transfer of such lien, to the prejudice of the creditors of the vendee.

On the 25th of August, 1841, Noah Dixon, executed two single bills to John W. Martin, to secure the payment of the purchase money of land sold by Martin to said Dixon, which were by said Martin assigned to the present holder, on the 25th June, 1842, with guarantee of payment. The land was conveyed to said Dixon on the 11th October, 1841, who died in 1844, leaving an estate inadequate to pay all the claims against it, although he was in solvent circumstances at the time of the assignment, which took place on the 25th of June, 1842. One of the bonds became due in August, 1843, and the other in August, 1844, but no evidence was produced of any proceed-